

Draft Minutes of the
Delta Protection Commission
Thursday, November 18, 2004

1. Call to Order/Roll Call

Chairman McCarty called the meeting to order at 6:35 p.m.

Present: Chairman McCarty, Vice Chairman Ferguson, Commissioners Calone, Curtis, Johnson, Kelly, Nottoli, Sanders, van Loben Sels and Wilson.

Absent: Commissioners Cabaldon, Coglianese, Forney, Glover, McGowan, Ornellas, Sturm, and Shaffer.

2. Public Comment

There were no public comments.

3. Minutes of the Last Meeting

Commissioner Kelly requested that a typo be fixed on page 2 of the minutes. Commissioner Johnson moved approval of the minutes; Vice Chairman Ferguson seconded. Chairman McCarty, and Commissioners Kelly and Sanders abstained. The minutes were approved by voice vote with changes.

4. Chairman's Report

Chairman McCarty reported that Senator Michael Machado and Assemblywoman Lois Wolk were re-elected to their posts and Commissioners Calone, van Loben Sels, Wilson and Vice Chairman Ferguson were reelected as the RD representatives. Changes to the Commission include Commissioner Augie Beltran resigning his post as the San Joaquin Council of Governments representative, Commissioner Marci Coglianese resigning her post as the ABAG representative and Commissioner Ruth Forney not re-elected to her position as the Solano County Supervisor. Chairman McCarty also congratulated Mr. Michael Scriven who was elected as the Central Delta Reclamation Districts' representative on the Commission.

The next meeting of the Delta Protection Commission is scheduled for Thursday, January 27, 2005, 6:30 p.m., Jean Harvie Community Center. At that meeting, the Commission will review the 2004 Annual Report and hold election of officers.

5. Commissioner Comments/Announcements

Commissioner Kelly reported that the Department of Water Resources will be holding a public meeting on the South Delta Improvements Program on December 7, 2004, 1-3 p.m., at the Bay Delta Authority Offices, 650 Capitol Mall.

Commissioner van Loben Sels stated that the November newsletter quoted Dr. Jeff Mount, U.C. Davis as stating that "there is a backlog of about \$100 billion to achieve PL84-99 standards...", and wonder if it was a misprint. Ron Ott responded that the correct amount is \$1 billion. Ms. Clamurro stated that she would note the correction in the next newsletter.

6. Attorney General's Report

Christine Sproul had no report. Ms. Sproul expressed her gratitude in working with Chairman McCarty over the years.

7. Executive Director's Report

Margit Aramburu distributed handouts:

- 2005 Schedule of Meetings
- Copy of joint letter issued by Secretary Chrisman and Kawamura to ensure that staff and agencies work together to address resource and agricultural issues.
- The Governor's Veto message on AB 2476 and SB 86; including a message that the Governor would work on Delta issues in the next legislative session.

Ms. Aramburu announced that clarification of Agenda Item 13 goes beyond updating the Commission's Infrastructure and Levees background reports. The Commission must update its entire Plan as required by the Legislature. A corrected agenda was posted on the Commission's website.

The Blue Ribbon Commission of the California Performance Review completed its hearings and forwarded its findings to the Governor. Many state agencies would be affected, particularly the DPC which is recommended for elimination. The changes will be noted in the Governor's Budget which will be released in January 2005.

Ms. Aramburu reported on the Commission's October 28, 2004 trip to Liberty Island. The boat tour around the Island gave Commissioners, staff, and general public a first hand look at impacts on nearby levees from the wave action on the flooded island.

Ms. Aramburu said she attended a conference on flood control sponsored by the Water Education Foundation.

The Dutra Quarry is currently seeking to amend its permits from Marin County. The quarry was allowed to continue to excavate; however, it is trying to address the good neighbor issues by limiting the work hours but is seeking around-the-clock work in the case of an emergency situation.

Contra Costa County has drafted a vessel sanitation and mooring ordinance which will require any vessel moored for more than four days to get a permit from the sheriff, and require any houseboat outside of a marina to move every 30 days. Additionally, Contra Costa is coordinating an effort with Sacramento and San Joaquin Counties through their health departments. The issue will come before the Contra Costa County Board of Supervisors in December.

8. CALFED Update

Ron Ott, CALFED staff, updated the Commission:

Delta Levees and Habitat Advisory Subcommittee will meet December 3, 2004; CBDA will meet December 8-9. Topics of discussion include a report on the implications of climate change on water management in California, Bulletin 160 and the Ten Year Financing Plan.

HR 2828: The CALFED bill has been signed and CBDA staff is in Washington D.C. trying to get funding appropriated.

DRERIP: The Department of Fish and Game (DFG) hired a Senior Environmental Scientist to oversee the DFG Bay Delta office and DRERIP staff. The DRERIP Adaptive Management Planning Team is currently developing a framework for the development of the DRERIP Ecosystem Conceptual Models. Additionally, several fish experts have agreed to develop life history modes for the Sacramento Splittail, Delta Smelt, Longfin Smelt and Green Sturgeon.

Commissioner van Loben Sels commented that the draft Ten Year Financing Plan states that the first ten years is one-third of a total project, but it does not mention how far along the State will be as far as bringing the levees up to PL84-99 standards. He said the Commission should return to the Record of Decision to help in guiding CALFED in bringing levees up to standard. Commissioner van Loben Sels also stated that CALFED should resolve the issue of what percentage of levee maintenance should be paid for by the recreational boating community because the recommended amount of forty percent was too high. Mr. Ott responded that CBDA looked at all options for financing; however, it is not recommending funding from recreational boating at this time; CBDA is not recommending specific areas or interest groups to make up the difference.

Commissioner Johnson said that the Department of Boating and Waterways objected to the 40 percent because there was no science to back the number up. He said DBW was undertaking a long term study with a UC San Diego oceanographer on boaters' contributions to levee erosion.

Commissioner Kelly commented that DWR's comprehensive levee evaluation is in the scoping stage and evolved from the Jones Tract Levee breach and the objectives from the CALFED levee program. She said that funds were limited and questions arose regarding what segments the State and locals pick up and the objectives to accomplish. The reevaluation would use the risk assessment to look at factors affecting levee stability and prioritize areas for work. She further said that there was potential for the CALFED objectives in the ROD to be modified. The study will take place over two years and it is expected that the scope would be run through the CALFED Levee Program Subcommittee and the CBDA for comment and approval before moving forward.

Chairman McCarty asked if the \$90 million allocated from the federal government for levee rehabilitation would be controlled by CALFED or the Army Corp of Engineers. Mr. Ott said he did not know the answer.

9. Briefing on San Joaquin River

Barry Nelson, Natural Resources Defense Council (NRDC), updated the Commission on the recent legal ruling regarding the flows in the San Joaquin River. Mr. Nelson said the San Joaquin River is the second largest tributary to the Delta and was a major salmon producer in the State of California. He said that the completion of Friant Dam in the 1940's was a death knell for the San Joaquin River. Additionally, for the last fifty years, one hundred percent of the river has been diverted—as none of its water makes it to the Delta. He said NRDC was worried that the Stanislaus is assuming most of the share of protecting the Delta and is failing. He said NRDC is skeptical that problems are solvable without flows in the San Joaquin River, and added that drinking water from the San Joaquin is not Sierra water but ag discharge water and water from tributaries.

NRDC vs. Rodgers is the lawsuit filed in 1988 to persuade the Bureau of Reclamations to restore water to the San Joaquin River. The Friant Irrigation District intervened and the NRDC challenged the renewal of the Friant contracts that commit 100 percent of the river. The lawsuit focused on state requirements that say the “operator of any dam must release enough water to keep downstream fish in good condition”. Mr. Nelson said that the litigation was put on hold because Friant asked to talk; however, four years of negotiation have been spent under the guise of a federal mediator who put together a proposal of the environmental fishing community and others. NRDC accepted the settlement but Friant rejected the settlement, which put NRDC back in court and the Attorney General and Deltakeeper both filed amicus briefs in support of NRDC. In the end, the federal court judge ruled that state and federal law have been violated and the operation of Friant Dam has been illegal.

Mr. Nelson stated that restoration details have not been worked out, but need to take into account the benefits of restoration and legitimate needs of the agricultural community. In January 2005 the court will issue more rulings. Options include sending the case to the State Water Board, appointing a special master to develop a restoration plan, or using a court appointed expert to figure out how to restore the river. The case is moving toward the remedy phase and Nelson urged the Commission to think about sending out a statement regarding support for restoration.

Commissioner van Loben Sels asked if NRDC was successful with negotiations and/or litigation and was able to restore river how many acre-feet would be needed, and if that number would have an impact on winter/summer downstream water levels. Mr. Nelson responded that NRDC would need at least 350,000 acre feet of releases from Friant, and it would not have any impacts on the water levels. He further stated that the best way to restore the river is to do a better job of capturing flood flows.

Commissioner Kelly stated that both sides to the lawsuit were close to an agreement, and asked what happened to throw a monkey wrench into the negotiations. Mr. Nelson said he did not know the answer to the question because NRDC thought that Friant was going to settle the case but Friant has not offered a counter proposal.

Chairman McCarty said he felt the issue should come back before the Commission because there were issues the Commission needed to flesh out. Ms. Aramburu said the item could go before the Ag Committee and then on to the full Commission for action.

Commissioner van Loben Sels requested that representatives from the South and Central Delta Water Agencies be present when the item comes before the Ag Committee.

10. Presentation of Updated Recreation Facilities Inventory

Ms. Aramburu announced that Lori Clamurro provided an updated recreation inventory spreadsheet. She asked that any changes or corrections be forwarded to staff. The Dangermond Group is working on their portion of the contract for water-based recreation and staff was still seeking funds for the upland portion of the contract.

11. Report from Delta Land Use Impacts Committee Regarding Review of Projects in the Primary and Secondary Zones

This item was tabled until the January 27, 2005 meeting.

12. Discussion of Possible Updates to Land Use and Resource Management Plan for the Primary Zone of the Delta Protection Commission

Ms. Aramburu announced that John McCaull, Steve Mello, and Gil Labrie, were invited to the meeting to convey their thoughts on the updates to the Management Plan.

John McCaull, Private Consultant, said he was involved in drafting the legislation for establishing the Delta Protection Commission. Mr. McCaull said he reviewed the Environment, Water, Agriculture and Land Use background reports. He said he found the reports to be an excellent source of information. He said that regarding agriculture, he felt that ag land conversion and crop usage could be updated without difficulty using the County ag commissioners' annual crop reports. He further stated that the text of the ag conversion report could be updated using the existing data. He said the most important part of the reports were the findings and policies, which could be addressed by using willing participants—considering that staffing at the DPC has not changed since its inception. It would not be a massive undertaking to update the report; and offered his help. He said he found it interesting that the policies of the reports are very good and viable, but he saw the challenge in how to put the policies into practice. The relevant committees should review each of the reports and he would like to see more participation and focused dialog through the committee structure.

Gil Labrie, DCC Engineering, said he felt the base information in the reports should be updated. He said he agreed with Mr. McCaull that there is a need for the DPC and that focus and time should be spent on the policies—particularly to bring them into the 21st century. He also said that the policies regarding levees should receive more examination because the policies do not make sense. Otherwise, the DPC has done a good job. He said that from what he has seen, the State is at the cusp of needing DPC oversight in terms of development, growth and improvement of existing facilities.

Steve Mello, farmer and former Commissioner, stated that he originally fought legislation to create the Commission; however, when it became apparent that the Commission would be created, he fought to amend the legislation to include local representation. Mr. Mello said the Commission should discuss the findings before making any changes to the policies. He said that part of the problem is that outsiders have tried to dictate that enough has not been done in certain areas of the Primary and/or Secondary Zones. Mr. Mello said he took issue with policies P2 and P3 of the Utilities and Infrastructure (expansion of sewage treatment facilities, etc.) because certain communities, such as Clarksburg have no such facilities. He said the Commission should

also keep an open mind with the Utilities and Public Infrastructure Policy because with recreation being such a big part of the Delta economy, facilities should be necessary for public marinas, public parks and fishing access points. He further stated that subjects such as parcel size and clustering (p. 25, Policy 10) should be revisited and Recommendations 2 and 3 (page 20) should be converted to policies. He said that many State agencies own property in the Delta but are not paying their fair share of assessment—which puts an undue fiscal burden on the reclamation districts. He said he would like to see a policy or recommendation added that would state that the Department of Water Resources flood operations center (or appropriate agency) designate a relief cut location on all the islands in the event of a flood to allow water to drain from a particular island that has been flooded in a controlled manner to minimize the impacts on the adjacent islands. He said this would reduce any threats to communities such as Walnut Grove.

Chairman McCarty commented that over the years the Commission has tried to get the Management Plan to adapt to the changing times. He said the most recent regional change has been the elimination of the buffer the Secondary Zone provided for the Primary Zone through continued urban development. He said in the next ten years the two zones will butt against each other at the Primary Zone line. He asked the panel which background report would be the priority.

Mr. Mello responded that he felt the priority should be with the Levees report because there would be no land use plan or transfer of state and federal waters to the south state without protection of the levees.

Mr. Labrie responded that the priority and resources should be with the policies and not with updating the background information. Mr. Mello stated that he did not agree with Mr. Labrie because there would have to be a discussion of findings to adopt policies that made sense.

Mr. McCaull said he felt the priority should focus on levees. He said the challenge would be a continued focus on the legislative process from the Administration on the future of the Commission. He said this was a good thing because there may be some items that should be elevated in statute versus being buried in internal documents—in order to get attention. He said he was frustrated because he has not seen the Bay Delta Authority embrace the Commission as a regional entity—from a funding and policy perspective—to get work done in the Delta. He also said that local government should come together under the auspices of the Commission in dealing with increased development in the Primary Zone and take tools such as clustering and transfer of development rights and make them work. He further said that one question to ask was how to make ag viability a program that attracts dollars, and whether the Commission could create an incentive to create mechanisms to have buffers in the Secondary Zone that the State, landowners and local government can agree on.

Commissioner Ferguson asked if issues regarding private property rights were discussed during the legislative processes. Chairman McCarty responded that in the beginning, the Commission was to have regulatory teeth and be more like the Bay Conservation and Development Commission; however the feeling of the community was not to have another governmental layer.

He said that through discussion and planning it was decided to change the Commission to provide planning oversight but not direct regulatory oversight—leaving the land use decisions at the local level. He further stated that from what he has seen, the Commission does not impact private property rights.

Chairman McCarty asked the panel if the existence of the Commission has been a damper on property values in the Delta. Mr. Labrie responded that the Commission is one of the factors when people explore land use options.

Commissioner Wilson commented that he has seen that when landowners are selling real estate, they are asked if that land is located in the Primary or Secondary Zone. He said he felt the Delta Protection Act has taken value from land in the Primary Zone.

Chairman McCarty said that he too has seen it as a damper on small growth within some of the commercial recreational areas.

Mr. Mello stated it was not the Commission, but rather legislation that limited private property development potential. He said it was the very issue that landowners appealed during the discussion of the creation of the Commission. He said he was against the Commission holding conservation easements because in the beginning the Commission had a sunset date.

Ms. Aramburu announced that the Commission had to report to the Legislature by January 10, 2005 as to how it would monitor growth/development in the Primary Zone. She recommended that the Commission think about how it was going to update its Plan and coupled with the suggestions from the panel, the Commission should review the reports but move toward the “meat” (findings, policies and recommendations) as time permitted. Lastly, she said that analyzing development in the Secondary Zone and how it impacts the Primary Zone is a vague task; therefore, it would be helpful to seek outside help from an educational entity to help define the types of resources and development it wants to address.

Chairman McCarty opened the public hearing.

Mark Shroeder, Purcell, Rhoades & Associates stated that he was a structural engineer that has been trying to contact someone to discuss his proposal to implement a barrier to address most of the issues listed in Item F in the report. He said his suggestion is for a levee strengthening material, as there should be new alternatives to address the different areas in the Delta.

Chairman McCarty said that the idea was an excellent one; however, the Commission could not take a position on his recommendation, as it was not listed on the agenda as an action item.

Chairman McCarty closed the public hearing.

Chairman McCarty thanked the panel members for their assistance.

13. Plan to Update the Land Use and Resource Management Plan for the Primary Zone of the Delta: Utilities and Infrastructure and Levees

Chairman McCarty reported that the Commission has been directed by the Legislature to report on the state of review of its Management Plan. The report should include the Commission’s

efforts to identify changes and growth pressures within the Primary Zone, and lands within the Secondary Zone, the development of which impacts the resources of the Primary Zone. The report is due to the Legislature no later than January 10, 2005.

Ms. Aramburu reported that there is no specific analysis of the Utilities and Infrastructure and Levee background reports at this time because staff had been waiting for input from the invited panel members and input from the public. She recommended that the Commission adopt the following outline:

- Add an enhanced monitoring process as recommended by the Delta Land Use Impacts Committee, which will help identify changes and growth pressures within the Primary Zone.
- Add the comments of the invited panel to guide the Commission and staff in the update of the Background reports and possible update of the Land Use Plan.
- Goal of updating all eight Background reports by the end of 2005; the notice of the update process has been sent to the Commission's entire 350-name mailing list.
- Recreation and Access—at least the water oriented portion—will be addressed by Dangermond Group's study.
- Staff is still hopeful that American Farmland Trust will undertake some additional studies in the Delta on agricultural viability.
- Staff is currently working on the Environment, Land Use, and Utilities and Infrastructure reports.
- As research is completed on each background report, public review and comments will be solicited prior to presenting the updated background report to the Commission for review.
- Staff recommends the Commission identify a nonprofit or academic partner assist in the identification of Secondary Zone development impacts on Primary Zone resources.

It was moved by Commissioner Calone and seconded by Commissioner Wilson to submit the recommended staff report to the Legislature. The motion was approved unanimously.

Resolutions of Appreciation

Ms. Aramburu announced that Chairman McCarty was leaving his position on the Commission after ten years of service. Commissioner Ferguson presented Chairman McCarty with a wall plaque and gavel, a book and photograph of the Delta, in addition to a Resolution of Appreciation. Chairman McCarty announced that in addition to himself, Commissioners Beltran, Coglianese, and Forney would be leaving the Commission at the end of the year, and staff had prepared Resolutions of Appreciation for them as well. He thanked them for their service to the Commission and Delta. It was moved by Commissioner Wilson and seconded by Commissioner Johnson to approve the Resolutions of Appreciation. The motion was approved unanimously.

14. Adjourn

The meeting was adjourned at 8:55 p.m.